



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R05-OAR-2014-0206; FRL-9917-59-Region 5]

Approval and Promulgation of Implementation Plans; Wisconsin;

Nitrogen Oxide Combustion Turbine Alternative Control

Requirements for the Milwaukee-Racine Former Nonattainment Area

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule; supplemental.

SUMMARY: On February 24, 2014, the Wisconsin Department of Natural Resources (WDNR) submitted revisions to the limits found in its nitrogen oxides (NOx) combustion turbine rule for the Milwaukee-Racine area formerly nonattainment for the 1997 ozone standard. This revision is contained in "2013 Wisconsin Act 91 - Senate Bill 371," which provides for alternative NOx requirements, subject to Environmental Protection Agency (EPA) approval on a case-by-case basis, to determine whether these alternative limits satisfy the reasonably available control technology (RACT) requirements of the Clean Air Act (CAA). EPA proposed to approve this rule as a revision to the State Implementation Plan on April 30, 2014 and received adverse comments. EPA is issuing this supplemental proposal to revise and expand the basis for proposing approval of the SIP revision. This supplemental proposal addresses the issue of whether the

SIP revision satisfies certain anti-backsliding requirements of the CAA. EPA is seeking comment only on the potential anti-backsliding issue, and is not re-opening for comment other issues raised in its prior proposal.

DATES: Comments must be received on or before **[insert 14 days after the date of publication in the Federal Register]**.

ADDRESSES: Submit your comments, identified by Docket ID No.

EPA-R05-OAR-2014-0206, by one of the following methods:

1. www.regulations.gov: Follow the on-line instructions for submitting comments.
2. E-mail: aburano.douglas@epa.gov
3. Fax: (312)408-2279.
4. Mail: Douglas Aburano, Chief, Attainment Planning and Maintenance Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.
5. Hand Delivery: Douglas Aburano, Chief, Attainment Planning and Maintenance Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office

official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. EPA-R05-OAR-2014-0206. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at www.regulations.gov, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through www.regulations.gov or e-mail. The www.regulations.gov website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through www.regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification,

EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the www.regulations.gov index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in www.regulations.gov or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Steven Rosenthal, Environmental Engineer, at (312) 886-6052 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Steven Rosenthal, Environmental Engineer, Attainment Planning and Maintenance Section, Air Programs Branch (AR-18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886-6052, rosenthal.steven@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document whenever "we," "us," or "our" is used, we mean EPA. This supplementary information section is arranged as follows:

- I. What is the background for this supplemental proposal?
- II. On which specific issue is EPA taking comment?
- III. What action is EPA taking?
- IV. Statutory and Executive Order Reviews

I. What is the background for this supplemental proposal?

A detailed background is contained in the April 30, 2014 direct final rule (79 FR 24337), which can also be found in the docket for this action.

Under Wisconsin's current SIP approved NR 428 NO_x control program, existing simple cycle combustion turbines larger than 84 megawatts (MW) that undergo a major modification after February 2001 must meet the emission limitations set forth in s. NR 428.04(2)(g)1.a. and 2.a. This provision sets NO_x emission limits of 12 or 25 parts per million dry volume (ppmdv) at 15% oxygen (O₂), on a 30-day rolling basis, when firing natural gas or distillate oil, respectively.

The WDNR originally set the NO_x emission limitations for combustion turbines, in NR 428.04(2)(g)1.a. and 2.a., based on the mistaken assumption that dry low NO_x (DLN) combustion technology was both feasible and available for new and modified

combustion turbines and that such technology was capable of meeting the established emission limitations. As previously stated, the emission limitations in NR 428.04(2)(g)1.a. and 2.a. apply to simple cycle combustion turbines that are larger than 84 MW (of which there are only four in the Milwaukee-Racine maintenance area) and undergo a major modification. These four combustion turbines are the model 11N turbines that were manufactured by ASEA Brown-Boveri (ABB) and operated by We Energies at its Paris generating facility. These four combustion turbines were designed and manufactured to use water injection instead of DLN technology to control NOx emissions. Use of water injection limits NOx emissions to the alternate levels provided by Wisconsin Act 91 (25 and 65 ppmdv), but cannot achieve the emission limits required by NR 428.04(2)(g), Wis. Admin. Code (12 and 25 ppmdv). These combustion turbines are all located in an area that is designated attainment for both the 1997 and 2008 ozone standards, although there is currently a monitor in the area with a design value that exceeds the 2008 ozone standard.

For reasons described in the April 30, 2014 direct final rule (79 FR 24337), WDNR has determined that the previously-approved SIP NOx emission limits for simple cycle combustion turbines that undergo a major modification in the Milwaukee-

Racine area are not feasible for the four existing combustion turbines to which these limits could apply. EPA agrees with this determination. The Wisconsin legislature adopted s. 285.27 (3m), which became effective on December 15, 2013, to establish feasible RACT limits in the event of a major modification. EPA believes that these limits reflect RACT and issued both a direct final rule and a proposed rule to approve the rule into the SIP.

In response to EPA's rulemakings, the Sierra Club and Midwest Environmental Defense Center provided comments objecting to the proposed revision on the grounds that two units had undergone modifications in 2002, making them subject to the lower limits of s. NR 428.04(2)(g)1.a. and 2.a. The comments stated that the SIP revision was thus relaxing the limits for these units and that "EPA has done no analysis of whether this increase would result in problems maintaining compliance with ozone standards or 1-hour NO₂ standards."

In response to this comment, EPA withdrew the direct final rule and is providing this supplemental notice to explain its basis for concluding that the SIP revision satisfies the anti-backsliding requirements of section 110(l) of the CAA.

II. On which specific issue is EPA taking comment?

EPA notes the point raised by the commenters that, although the rule is not expected to result in any units operating at

higher emissions rates than in the past, the rule would increase the emissions limits applicable to these sources under the SIP.¹ Section 110(l) of the CAA provides in part that, "The Administrator shall not approve a revision of a [SIP] if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in section 7501 of this title), or any other applicable requirement of [the Act]."

In order to avoid any potential for interference with attainment or maintenance of the NAAQS for ozone and nitrogen dioxide, Wisconsin has identified contemporaneous, offsetting emission reductions of NOx from a different emission source to compensate for the change in the SIP limits for NOx proposed in the rule at issue.² We explain below how Wisconsin calculated the appropriate amounts of offsets, and the source of the offsets.

The theoretical emissions increase being addressed for anti-backsliding is the difference between the emissions that would occur annually if the Paris combustion turbines meet the 12 ppmdv requirement compared to emissions allowable under the

¹ As noted above, EPA believes that the emissions rates in the SIP are technically infeasible for these sources to meet.

² As the offset is for NOx emissions, the analysis is equally applicable to the NAAQS for ozone and nitrogen dioxide.

proposed SIP revision.³ In order to quantify this differential in terms of tons per year, Wisconsin identified that the maximum fuel use for each individual CT occurred in 2005,⁴ and converted the emissions standards from ppmdv @ 15% O₂ to a lbs/mmbtu equivalent.

To determine the amount of emissions that needs to be offset, the difference between the 2005 maximum allowable emission rate of 25 ppmdv @ 15% O₂ (converted to 0.092 lbs/mmbtu) minus 12 ppmdv @ 15% O₂ (converted to 0.0442 lbs/mmbtu) was multiplied by the heat input for each combustion turbine in 2005. This calculation results in a total of 54.6 tons per year for which equivalent reductions must be obtained. This is a conservative estimate of the amount of offsetting credits needed because it is based upon the year within a 13-year period with the highest fuel use.

Wisconsin has identified enforceable emission reductions to be used in offsetting the 54.6 tons per year of excess emissions in order to offset any backsliding. These emission reductions are generated by enforceable emission limitations currently in

³ Although the SIP revision would continue to allow use of fuel oil, we have analyzed the change in emissions with respect to natural gas because at least since 2009 (and probably longer) these sources have only fired natural gas for electricity generation, and, in light of current pricing and industry practice, we do not expect this to change.

⁴ Wisconsin selected 2005 based on a review of historic emissions from 2001 through 2013 as reported in EPA's Clean Air Markets Division (CAMD) emissions database. This timeframe reflects that the 12 ppmdv requirement was first created in January 2001.

place for the South Oak Creek (SOC) Unit 5 electric generating facility, which operates in the Milwaukee-Racine former ozone nonattainment area. Under the Wisconsin Ozone SIP, SOC Unit 5 is required to meet a NOx emission limitation of 0.18 lbs/mmBtu. However, the same unit has also been required to meet an emission limitation of 0.10 lbs/mmBtu since 2013 under a January 18, 2012 consent decree (Civil Action No.03-C-0371) entered between EPA and We Energies, the operator of the SOC facility.⁵ Paragraph No. 107 of the consent decree allows the use of emission reductions generated by the decree "for the purpose of attainment demonstrations . . . or in determining impacts on NAAQS." Wisconsin determined the emissions in excess to the SIP by multiplying the difference in the SIP and consent decree emission limits (0.18 - 0.10 lbs/mmBtu) by the unit's heat input in 2013. The unit's heat input for 2013 was obtained from the CAMD database. This calculation yields a total of 334.3 tons per year of excess emission reductions, which have not been allocated as offsets for any other purpose. Notably, the heat input for SOC Unit 5 was the lowest in 2013 since 2001. Using this value thus represents the most conservative value since 2001 for heat input in calculating excess emissions reductions.

⁵ Thus, these compensating reductions are contemporaneous with the emissions limits in Wisconsin statute 285.27 (3m), which was enacted by the Wisconsin legislature in December 2013.

Wisconsin submitted to EPA 54.6 tons per year of excess emission credits generated by the SOC Unit 5 generating facility to be used to address potential backsliding under this SIP revision. Wisconsin also notes that a total of 61,970 tons of NOx was emitted in the Milwaukee-Racine ozone area from all sources in 2011. The emission reductions of 54.6 tons per year being addressed here for anti-backsliding represents less than 0.07% of that total.

III. What action is EPA taking?

EPA is seeking comment only on the section 110(l) issue described above and is not reopening comment on any other issues.

IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995

(15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

This rule is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control,
Incorporation by reference, Intergovernmental relations, Ozone,
Reporting and recordkeeping requirements, Nitrogen oxides.

Dated: September 30, 2014.

Susan Hedman,
Regional Administrator, Region 5.

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